



IAP08Rec'd PCT 09 DEC 2008

PATENT

Attorney Docket No. 02386-0103

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Lars Montelius et al.) Group Art Unit: 3722
)
Application No.: 10/576,499) Examiner: To be Assigned
)
Filed: April 20, 2006)
)
For: Apparatus and Method For Aligning) Confirmation No.: 6173
Surfaces)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

PETITION TO REVIVE ABANDONED APPLICATION
UNDER 37 C.F.R. 1.137(a)

Applicants hereby petition the Honorable Commissioner of Patents and Trademarks to revive this application under the provisions of 37 C.F.R. 1.137(a).

This application was filed on April 20, 2006 as the national stage of PCT/EP04/52656. Abandonment of the application subsequently resulted from applicants' failure to file a response by February 19, 2007 to the Notification of Missing Requirements of December 19, 2006. Applicants' failure to do so, however, was unavoidable because the Notification was never received by applicants or their attorney. Applicants therefore request revival of the application and withdrawal of the holding of abandonment in view of Delgar, Inc. v. Schuyler, 172 U.S.P.Q. 513 (D.C.D.C. 1971) in which such a remedy was granted under analogous facts.

12/10/2008 MKAYPAGH 00000076 060916 10576499

01 FC:2617 65.00 OP
02 FC:2452 15.00 DA 255.00 OP

On June 26, 2008 the undersigned received a Notice of Abandonment dated June 24, 2008 noting the failure to timely file a Reply to the Notification mailed on December 19, 2006. Upon checking the docket records and the file, the undersigned determined that the firm had not received and had no record of receiving the Notification.

Enclosed as Exhibit A is a copy of the Prosecution History Report of this case as set forth in the docket records of the undersigned's firm as of December 5, 2008. This history shows the attorney for the application is "ASG," which are the undersigned's initials and the firm's internal reference for the case, which is 02386-0103. As can be seen, there is no entry as of December 5, 2008 showing receipt of the Notification of December 19, 2006 or of the indicated due date for reply which would have been February 19, 2007.

In addition to monthly reminders, reminders are also distributed in the undersigned's firm on a daily basis. Attached as Exhibit B is a copy of the firm's daily docket reminders for all attorneys for February 19, 2007, the original due date for filing a response to the Notification. As can be seen, here also there is no entry for reference number 02386-0103 for any reply due on February 19, 2007.

Enclosed as Exhibit C is a copy of a PTO Mail Search of the records of the undersigned's firm for the period December 19, 2006 to December 27, 2008 showing that during that period the only document received from the U.S. Patent and Trademark Office in this case was the Notice of Abandonment dated June 24, 2008

Finally, enclosed as Exhibit D is a copy of the PTO Mail Search of the undersigned's firm of all mail received from the U.S. Patent and Trademark Office

between December 19, 2006 and December 27, 2006. There is no entry for reference number 02386-0103.

As can be seen from these documents, there is no record that the Notification was ever received in the offices of the undersigned's firm. Because the Notification was never received, no reply was ever filed and the case became abandoned.

To this day, the original copy of the Notification of December 19, 2006 has not been received despite the fact there does not appear to be any problem with the printed address label.

Enclosed as required by Rule 1.137(a)(1) is a copy of the Declaration, a copy of the Notification and a check for \$65 (small entity) to cover the fee required.

Regarding the showing required by M.P.E.P. §711.03(c), following receipt of the Notice of Abandonment of June 24, 2008, the undersigned wrote to the applicants' attorneys in Sweden on July 2, 2008 informing them that the application now stood abandoned and that a Declaration signed by all six inventors was required to file a Petition to revive the application.

On July 11, 2008, the Swedish attorneys replied that they were trying to obtain the completed Declaration, but that at least one of the inventors was mountain climbing in Vietnam and could not be reached. However, they would provide the document as soon as they could.

On July 21, 2008, the Swedish attorneys informed the undersigned that they had been able to obtain three of the signatures on the Declaration. On the same day, they were informed that all signatures needed to be obtained to file the Declaration. On

July 22, 2008 they again stated they would send a completed Declaration as soon as they could.

On August 25, 2008, the Swedish attorneys were reminded of the need to file the Declaration in this case and were again reminded on October 8, 2008. They were informed at that time that if the at least one missing inventor's signature could not be obtained, the Declaration could be filed by the signing inventors on behalf of the missing inventor(s). On October 13, 2008 a communication was received from the Swedish attorneys indicating that some signatures to the Declaration were still missing, but the assignee, Obducat AB, assured them the rest should be received shortly.

On December 2, 2008 a letter was received from the Swedish attorneys dated November 25, 2008, enclosing a Declaration signed by all six inventors. As noted in the Declaration, while three signatures are in July, three others are dated November 17, 2008.

Upon receipt of a completed Declaration as required by Rule 1.137(a)(1), this Petition was promptly filed.

Accordingly, under the above noted Rule, applicants request revival of this application.

Enclosed is also a check in the amount of \$255 (small entity) to cover the fee required by Rule 1.137(a)(2).

If there is any additional fee due in connection with the filing of this Petition,
please charge such fee to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: December 9, 2008

By: 

Arthur S. Garrett

Reg. No. 20,338

Tel: 202-408-4091

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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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www.uspto.gov

| U.S. APPLICATION NUMBER NO. | FIRST NAMED APPLICANT | ATTY. DOCKET NO. |
|-----------------------------|-----------------------|------------------|
| 10/576,499 | Lars Montelius | 023860103 |

22852
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
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901 NEW YORK AVENUE, NW
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| INTERNATIONAL APPLICATION NO. | |
|-------------------------------|---------------|
| PCT/EP04/52656 | |
| LA. FILING DATE | PRIORITY DATE |
| 10/25/2004 | 10/24/2003 |

CONFIRMATION NO. 6173

371 FORMALITIES LETTER



Date Mailed: 12/19/2006

NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)

The following items have been submitted by the applicant or the IB to the United States Patent and Trademark Office as a Designated / Elected Office (37 CFR 1.495).

- Indication of Small Entity Status
- Copy of the International Application filed on 04/20/2006
- Copy of the International Search Report filed on 04/20/2006
- Preliminary Amendments filed on 06/14/2006
- Information Disclosure Statements filed on 04/20/2006
- U.S. Basic National Fees filed on 04/20/2006

The applicant needs to satisfy supplemental fees problems indicated below.

The following items **MUST** be furnished within the period set forth below in order to complete the requirements for acceptance under 35 U.S.C. 371:

- Oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date.
- To avoid abandonment, a surcharge (for late submission of filing fee, search fee, examination fee or oath or declaration) as set forth in 37 CFR 1.492(h) of \$65 for a small entity in compliance with 37 CFR 1.27, must be submitted with the missing items identified in this letter.

SUMMARY OF FEES DUE:

Total additional fees required for this application is \$65 for a Small Entity:

- \$65 Surcharge.

ALL OF THE ITEMS SET FORTH ABOVE MUST BE SUBMITTED WITHIN TWO (2) MONTHS FROM THE DATE OF THIS NOTICE OR BY 32 MONTHS FROM THE PRIORITY DATE FOR THE APPLICATION, WHICHEVER IS LATER. FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT.

The time period set above may be extended by filing a petition and fee for extension of time under the provisions of 37 CFR 1.136(a).

Applicant is reminded that any communications to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above (37 CFR 1.5)

Registered users of EFS-Web may alternatively submit their reply to this notice via EFS-Web.
<https://sportal.uspto.gov/authenticate/AuthenticateUserLocalEPF.html>

For more information about EFS-Web please call the USPTO Electronic Business Center at 1-866-217-9197 or visit our website at <http://www.uspto.gov/ebc>.

If you are not using EFS-Web to submit your reply, you must include a copy of this notice.

INDIA L EVANS

Telephone: (703) 308-9140 EXT 212

PART 2 - OFFICE COPY

| U.S. APPLICATION NUMBER NO. | INTERNATIONAL APPLICATION NO. | ATTY. DOCKET NO. |
|-----------------------------|-------------------------------|------------------|
| 10/576,499 | PCT/EP04/52656 | 023860103 |